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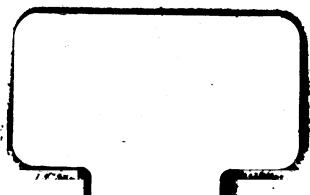
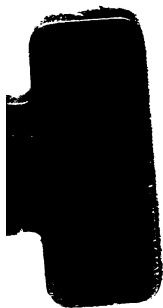
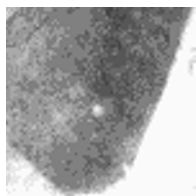
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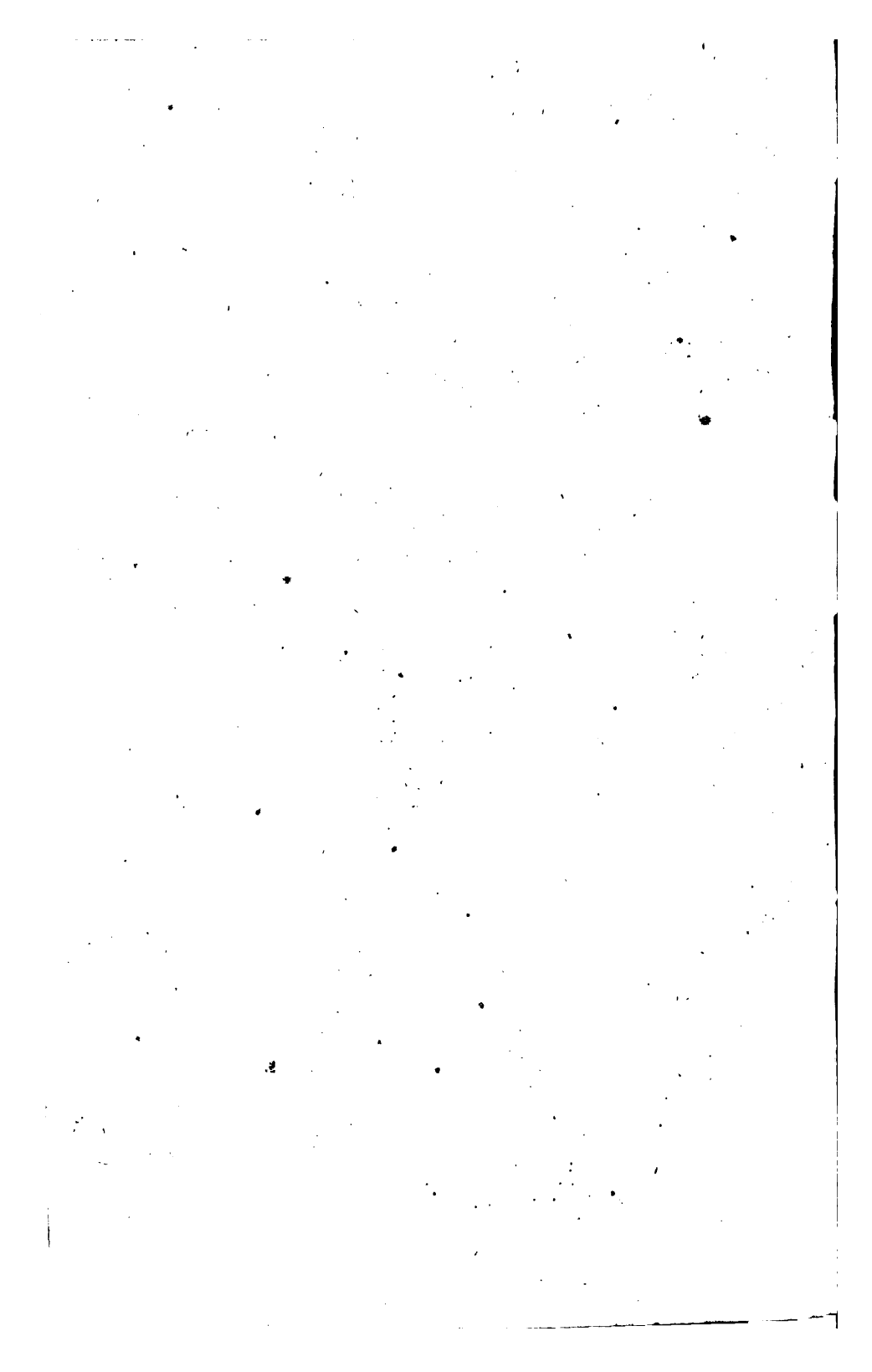
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From P. F. Vanuxem to his friend
SPEECHES, *T. H. Henshaw*

DELIVERED AT THE CITY-HALL

OF THE

CITY OF NEW-YORK,

IN THE

COURTS OF OYER & TERMINER, COMMON

PLEAS, AND GENERAL SESSIONS

OF THE PEACE.

BY JOHN ANDREW GRAHAM, I. I. D.

Counsellor and Advocate in all the high courts in the
State of New-York.

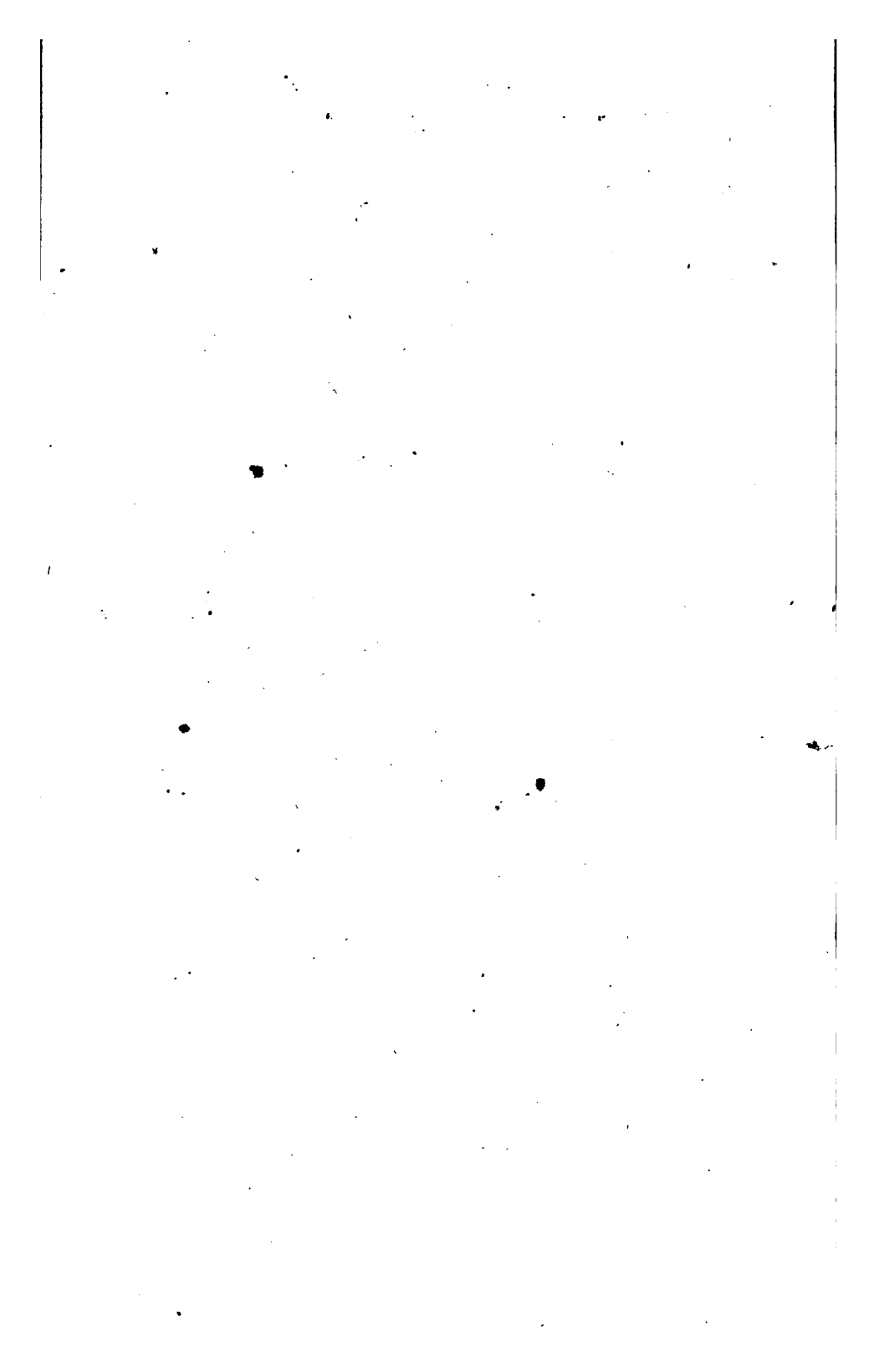
New-York :

PUBLISHED FOR M'GILLDA AND CO.

*And sold by Gould, Banks and Gould, sign Lord Coke,
City-Hall, and M. & W. Ward, 4 City-Hotel, New-York,
and Wm. Gould & Co. State-Street, Albany.*

D. A. and Co., Printers,

1812.



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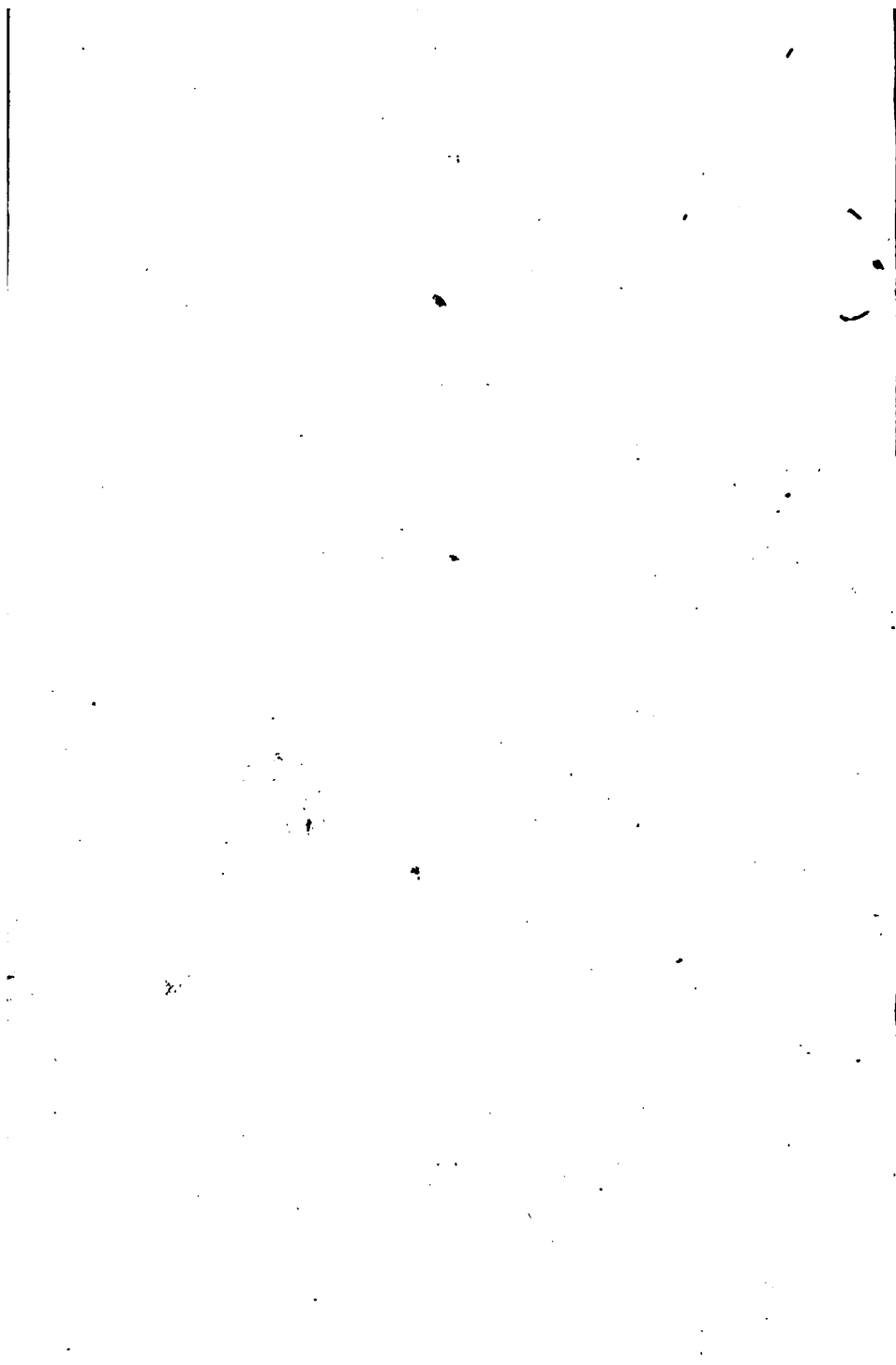
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TO THE PUBLIC.

It was one of the maxims of a celebrated ancient, that concealed virtue is little better than lifeless sloth. If this be a truth, sanctified by the opinions of the wise and learned, and confirmed by daily experience, so also, vice concealed behind the curtain, will have very little effect in deterring mankind from the commission of crimes, which will have a tendency to sap the virtue and corrupt the manners of the people. Any mode which shall have a tendency to develope the one and expose the other, must have the natural consequence of promoting the public interest. Vain will be the efforts of genius, or learning, if they are not employed in the works of public utility. The publishing of trials in our courts of justice, either in cases of disputed property, between private citizens, or in criminal cases, is no novelty, and therefore have the authority of custom, usage, and precedent to recommend it. Perhaps at no period of civil society than that of the present, will such a work be absolutely necessary, when the principles adopted are unsound, and the man-

ners of the people are rapidly falling into decay and ruin ; when the principles of religion, however well inculcated by our moral instructors, have not been sufficiently powerful, by the alluring incentives of evangelical truths, or the terrors of the law. Hence the necessity of calling to our aid the authority of law, to chastise the vices of the profligate and vicious. When criminals are punished and the lenity of our laws confined delinquents to the state prisons, the knowledge of the punishment or the acquittal of the innocent, seldom reach beyond the sphere of those who accidentally or from the exercise of professional duties, pay their attendance upon courts of justice. The object of the subsequent work is intended to give permanency and public notoriety to legal transactions ; and it is presumed the writer will stand justified in the eye of candour in republishing the processes of the law, when the design and object in view becomes fairly considered. How far the author has been able to accomplish the utility of the design must be left to the wisdom of the judicious reader.

"Celata virtus paulum distat sepulticæ inerticæ"

Mayor's Court.

—ACTION—

A	—	B	—	}	CRIM. CON.
		vs.			
C	—	D	—		

J. A. GRAHAM.—This is an action brought by the plaintiff against the defendant, for the recovery of damages in consequence of the defendant's having debauched the plaintiff's wife; by reason whereof his family has been broken up, his wife cast off a wandering vagrant upon the earth, and the husband left to bemoan in sorrow, the loss of the love, esteem, and affection of the wife of his bosom, and to behold the wretched ruin of his affectionate and hopeful children—for the mother, she who bore them, has been seduced by the defendant "*to eat sour grapes, and the children's teeth are set on edge*;" in consequence of which the loving husband and affectionate father, have been driven almost to a state of madness and despair.

The facts which we expect to prove are these—that

———, the plaintiff, is a ——— by trade, and sustains not only an excellent character, as a mechanic, but also that of an honest man, and possesses, in a good degree, a great share of the milk of human kindness. In the month of ———, year ———, he was married to ——— a young woman of a very decent respectable family; “*who had grace in all her steps, heaven in her eyes, and every gesture dignity and love.*” This couple have had six children, four are now living, two are not; they continued to live as they came together, in all that harmony, love, and affection, that can possibly be enjoyed in a marriage state, until about two years since, when the defendant, ———, who is a shop-keeper in ——— street, near ———, a married man, and of a large property, having by accident, seen the wife of the plaintiff, who was at that time very comely and beautiful, began to pursue her in the market, and followed her up, until at last, in the year ———, at the plaintiff’s own house he succeeded in accomplishing his most wicked and base purposes. That the defendant continued in the absence of the husband to visit the wife, both by day and by night, at all times, until he was at last detected, *in robbing the husband of the chastity of his wife.*

Gentlemen of the jury, well may the plaintiff say,

Know ye the anguish of a soul.
 Bow’d to the earth with misery,
 Who’s life is one continued sigh?
 Then have ye known a wretch like me.

No hope? Oh! no!! for hope is dead,
 And time has not within his power,
 One moment free from suffering :
Despair has seized on every hour.

We expect to prove to you, the unwearied pains, great art and subtlety made use of by the defendant in thus seducing the plaintiff's wife, for, from the nature of his education, his years, his acquaintance with men and things, he may be truly said to have possessed all knowledge as to cause and effect, which circumstance must plead to the aggravation of his crime, as all guilt in the eye of the law must be measured by the intent of the will.

In short, gentlemen, the baseness of the defendant's conduct has been such, that the plaintiff can truly say, there is not a cloud in the horizon of affliction but *that* has collected itself—there is not an arrow in the quiver of misfortune but *that* has wounded him—there is not an ingredient in the cup of affliction, but *that* the defendant has made the plaintiff to drink the very dregs.

Gentlemen, if we prove to you our case, of which by the bye, I have not a single doubt, I shall expect not only your verdict for the plaintiff, but shall also expect, that you give most exemplary damages; for, in case of seduction they are of all others (as his honor the Recorder will inform you) that, which a jury are called upon to give the largest damages.

☞ *Verdict guilty—Damages, 1500 dollars.*

Oyer and Terminer.



PEOPLE,
vs. } *Indictment for Murder.*
NEGRO GIRL, }

J. A. GRAHAM.—*Gentlemen of the Jury,* Having been appointed by the court, one of the counsel for the prisoner—I rise to address you in her defence, and while I have the honor of addressing you, I have to request, that you grant me your most serious attention and consideration. Be assured then, that no man deprecates more sincerely than myself, the unfortunate circumstance which has called you to perform this painful duty. But it is a duty you owe to the prisoner, to your country, and to your God; and I doubt not, but you will acquit yourselves *like men*. As for myself, I feel that I owe a debt of common humanity to the prisoner—this debt, I shall endeavour to discharge to the best of my abilities. In case I should contribute on this defence in snatching a poor, little, unfor-

fortunate creature from the fate that seems to threaten her, I shall thank the almighty for having made me the instrument of good, and shall be more happy in the event, than any one occurrence I have ever experienced in the whole course of a long professional life. If I manifest on this trial, an unusual degree of zeal, the urgent necessity of the case must plead my *apology*. Gentlemen, the prisoner stands indicted for having committed one of the greatest crimes known in civil society, viz. giving *poison* to her *mistress* with *malice prepense* ; of which poison the mistress died. The prisoner has plead *not guilty* to the charge, and put herself upon the country for trial. You gentlemen, are that country. Here I must remark that in *this case* you are the judges of the law as well as of the facts. And I thank God that you and I were born reasonable beings, and not brutes ; christians, and not *barbarians* ; able to investigate causes and their consequences.

The law presumes malice in the prisoner. It stands thus : " He that *wilfully* gives poison to another, whether he had provoked him or not, is guilty of wilful murder ; because it is an act of deliberation ; odious in law, and *presumes malice*." But I contend, that this presumption of law, can never be carried home to the prisoner, so as to convict her of *wilful murder* ; because the prisoner, from her infant years and capacity, was incapable of judging or deliberating, either as to *cause* or *effect*. Therefore, the

administering the poison could not, by her, have been through *malice prepense*.

The law has wisely provided, "that upon an indictment for murder, the prisoner may be acquitted of murder, and yet be found guilty of *manslaughter*."—But I contend that the prisoner is not guilty even of manslaughter. To trace the capacity of this child; let us for a moment inquire into the intellectual order or degrees of intellect in man. It is agreed by all writers on this subject, that there are three orders or degrees of intellect. The first belongs to him, that can by his own powers discern what is right and fit, and penetrate to the remoter *motives* of action. The second is claimed by him that is willing to hear instruction, and can perceive right and wrong when they are shewn him by another. The third is he that has neither acuteness nor docility, who can neither find the way himself nor be led by others. Those of the *last* order are justly entitled to our pity and commiseration, as they possess *not* the power of deliberation. On that ground, I contend that the *little prisoner*, from her *infant state* and *ignorance*, has a most powerful claim to your clemency and mercy. What says the sacred volume?

"Of him to whom much is given,

"Much, shall be required."

But with the *unenlightened, defects and deviations in them, will in the eye of Heaven be guiltless.*

Gentlemen, I beg leave to call your attention to the circumstances attending the conduct of the prisoner, in performing her usual duties in the family, during the sickness, death, and burial of the deceased, as *conclusive* evidence of her innocence. I would ask you, if it is amongst the number of *possibles*, that any one of the human kind, possessing faculties sufficient to distinguish between right and wrong, to have remained for *thirty hours* with a *corpse*, the life of which they had taken, without manifesting some degree of terror or perturbation of mind? I answer, that if a person capable of judging of *cause* and *effect*, had wilfully poisoned another, the person guilty of such a *diabolical* act, would instantly have *fled* the sight of the injured party. Again, gentlemen: the prisoner is but in the first dawnings of her reason: that faculty of the human mind, judgment, or the powers of discrimination between *good* and *evil*, *cause* and *effect*, seldom arrives in the human character at her period of life. The human mind, when left to its own operation, may be justly compared (if I may be allowed the expression) to a *dwarf* and a *giant*, when ripened by the advantages of education. The mind of the *prisoner*, from the first moment of her existence to that period when she committed the act, is but a short period, and therefore, could not have progressed to any degree of maturity. From the nature of her condition in life, through want of education,

may be truly said to be destitute of all knowledge—which circumstance must plead to the extenuation of guilt, as all guilt, in the eye of the law, must be measured by the intent of the will. Permit me to call your attention to this point. There is a wide difference between a guilty action proceeding originally from the mind of the agent, and that which proceeds from the suggestion of another. You all know, gentlemen, the force of the authority of imposition. You all know the impressive force, which elderly persons have, from the respect paid to age, when counsel is given to perform any act, coming from such a quarter. You all know the force which an aged negro woman must have had over the mind of this infant when she prompted her to commit the horrid deed; the presumption is, that she used all the arts of subtlety upon this occasion.

Gentlemen, let me carry you back to the first condition of human nature, in the primeval ages, when woman came forth immaculate from the bosom of her God—pure as the source from which she sprung—next to the rank of angel. If *she*, intrenched with all that purity of nature, and secured in all the intrenchments of virtue against the arts of seduction, could not withstand the beguilement of a *serpent*, how much less could this *infant* withstand seduction, armed with all the authority of imposition. If Eve, who was born a *woman child* by the fiat of Omnipotence, could not resist a temptation *pregnant* with the consequen-

ages of a ruined world, how much less could an *unenlightened child*, deficient in the powers of reasoning, resist the seduction : let me request you, gentlemen, to pay particular attention to this discrimination.

Gentlemen ; knowing, as I do, the honourable the district attorney, Mr. Riker, who possesses in a very eminent degree, the milk of human kindness, I feel confident he will *not* press the conviction of the prisoner. I shall detain you but a moment longer, then leave the *fate* of the prisoner with you, under the *charge* of the learned Judge, whose charges, on similar occasions, have not only done the greatest honor to his head, but also discovered immaculate *purity* of heart,

I know it will not be said of an *American jury*, enlightened with the understanding you possess, that the *records* of their court were suffered to be stained with *innocent blood*. Gentlemen, when you and the prisoner are called face to face, and eye to eye, for you to declare your verdict, I pray God that that verdict may be such as may be caught by the *winds* and *wasted* to the judgment seat.—
She lives ! she lives ! she lives !

☞ *Verdict Not Guilty.*

Mayor's Court.



A — B }
vs. } CRIM. CON.
C — D }

In the judicial circle, there's a point divine,
But every circle has a crooked line;
To square the circle, a problem tried in vain,
But the wisdom of your compass makes it plain.

J. A. GRAHAM.—*Gentlemen of the jury*, the trial by jury may be emphatically stiled the grand palladium of all liberty and justice. I agree fully in opinion with a learned English judge, who has said, that, that judge who dares arrest, or he who would condemn the rights of jurors, both deserve alike the punishment of traitors.

This action is brought by——, against——, for the recovery of damages, in consequence of the defendant having debauched the plaintiff's wife.—However painful, mortifying and distressing for my client to come forward

in this manner, fate has decreed it, his honor called, he was bound to obey.—Gentlemen, the facts which we expect to prove are these : that——, the plaintiff, is a—— by trade, and most justly sustains the character of an honest man. In the month of——, year—— he was married to——, a young woman of a very respectable family, who possessed every grace and every requisite qualification to make her husband truly happy. This couple have had six children, four are now living, two are not ; they continued to live, as they came together, in all that harmony, love and affection, that can possibly be enjoyed in a marriage state, until nearly three years since, when the defendant ——, who is a merchant in —— street, a married man, and of large property, having by accident seen the wife of the plaintiff, who was at that time very fair and beautiful, began to pursue her up, by a deliberate scheme and system of seduction, until he succeeded in accomplishing his most wicked, most base, and most diabolical purposes. We shall shew you gentlemen, “ that the defendant cannot plead the causes, which unhappily for human nature, are sometimes irresistible and unavoidable in their effects ; he cannot plead the impulse of a momentary passion ; he cannot plead the combination of those circumstances, and the importunity of appetite, under the influence of their union, which sometimes defy and baffle the most determined and well regulated

principles of morality ; he cannot say he was suddenly driven off the poise of reason. No ! His was a cold, deliberate, unfeeling infamy ; he was methodically mischievous—a seducer by system ; his guilt was such, as you, gentlemen, can better feel than the advocate describe. On the feelings of the jury, therefore, I must draw for the deficiency of expression.

Gentlemen, in the course of this trial I shall call your attention to the probable, so well as to the actual situation of the plaintiff ; that not only all his earthly happiness (by the loss of the company, fellowship, and society of his wife) is destroyed, but also, by the baseness of this bold systematic seducer, he may at this moment be entailed with a *spurious offspring*. We shall prove to you that the plaintiff occupied but one room in the house in which he lived ; that in this room was his bed ; that in his absence the defendant visited his wife ; that in the month of ——— in the year ———, he was closeted with his wife, and the door locked ; that the daughter of the plaintiff was, for a space of time, turned out of the room, so that the defendant might be alone with her mother ; that the defendant was often seen sitting on the bed by the side of Mrs. ——— ; that the defendant and the wife of the plaintiff were, at different times, seen together in two other houses, one of them a *common brothel* !

From the nature of the case, perhaps we shall not be

able to prove to you what is called in law *rem in re*, but the evidence we shall adduce must unseal a sepulchre, whited indeed and beautified without, but within filled with the vileness of lust, and the guilt of adultery. Deeds of horror, gentlemen of the jury, and consummate outrage of domestic bliss, hide in seclusion and sink from the eye of man ; while with gentle folds, and music on his tongue, the serpent enters our paradise and seduces a modern *Eve*—he winds his course *upon a rock, and leaves no trace behind*. He withdraws, and innocence has felt a mortal wound ! foul disease is left behind, and conscience, like the violated needle, trembles from its departed point. Gentlemen, while to the learned judge the law wisely confides its sound interpretation, to you, whose business is with man and his varied concerns, is as wisely given to decide the facts in this cause. It is your's, gentlemen, to mark the progress of vice ; to trace the devious windings of the cunning to his retreat ; to know the sound of the footsteps of him, who, with a flaggon of wine and a corrupting offering, seeks the adulterous bed. We shall prove to you that the defendant has often been seen in the twilight of the evening, walking backwards and forwards before the plaintiff's door ; that on discovering the absence of the husband, conscience bid him to withdraw ; but over the lowly whisperings of the divine oracle within, the demon of foul desire and of intemperate lust, at length prevails, drawn by the current of criminal passion, the defendant

seeks the vortex, and in the impure *charybdis*, is wrecked forever, the bark which bore my client's domestic bliss. Gentlemen, I well know that every art and every ingenuity will be manifested on this trial, so as to endeavour to convince your minds that the defendant is not guilty; but let me remark that although art, in your presence, may erect for the defendant an Edifice, and the learning of the counsel by him employed, may give to it an exterior seeming beauty, I must request of you to banish from your ears the charms of his eloquence, and with your oaths upon your consciences, to approach this illusory fabric of imagination, and make to this tribunal and your God your solemn verdict. To restore violated innocence, to heal the wounded heart, to re-unite the severed silken bands of affection, are beyond an earthly power.

If the manner, the conduct, and the situation of the witnesses, we shall produce in this cause, are sufficient to induce in you, as men, the belief that the defendant is guilty, you are bound by your oaths, as jurymen, to declare to this honorable court, in your verdict, that guilt. A heart, gentlemen of the jury, severed from its favorite nerve, wrung by the criminal hand of the defendant, and still bleeding from the recent wound, palpitates in agony, and here claims in damages, ten thousand dollars for the outrage.

You cannot here, gentlemen, like travelling pedlars,

retail by the yard. Upon human nerves, a price is not yet, by law, fixed : nor is there a licence for the trade. While there is a seducer abroad, while there is a wife dear to the bosom of one of you, while the safety of husbands, and the oath of God shall affect you, no minor pittance, no mills and cents, no barren compensation for a *cradle* ought to disgrace your verdict. Away, gentlemen, with parsimony ; if we prove our case, correct the adulterer ; chastise, with a scorpion, the violator of the peace of families ; permit not the rich man to cause the *honest mechanics* to moisten, with ineffectual tears, his lonely pillow. Wealth has here no indulgence against law and justice. You gentlemen, dare not by your verdict to set at nought the marriage covenant, and make your wives commoners of lust and intemperate passion.

I have now stated to you, gentlemen, our case, and have no doubt but that your verdict will be a monument of instruction to other jurors—as a legacy to all posterity.

General Sessions.

PEOPLE,
vs.
HANNAH SCOTT } *Assault & Battery.*

At the general sessions of the peace, for the city and county of New York, on Saturday the 15th of Nov. 1810, came on the trial of Hannah Scott, for an assault and battery, committed on a child of the age of two years and six months only, of the name of James Scott. The defendant pleaded *Not Guilty*. After the jury were sworn, and had taken the box, Mr. Graham, who had advised the prosecution, and being retained as counsel by the real mother of the infant, appeared on the part of the public, when by the politeness of the honorable the attorney-general, he proceeded to state the case, which was nearly in the following words, to wit:

May it please your honors, and you gentlemen of the

jury, I rise to state a case for your consideration which gives me much pain—pain did I say? yes, pain indeed! because when I reflect, that there is to be found any one of the human species, particularly one of the fair sex, capable of being so great a monster as the prisoner, *Hannah Scott*, I am pained to my very heart. Gentlemen, I feel for you; you have had a long session, and for your patience and services during the present session, which I have witnessed, I do not hesitate to declare that you deserve well of your country. I know, gentlemen, your great anxiety to return home to the wives of your bosoms, and to the children of your affection, but recollect this is the last day of the sessions, and your labours will soon be ended, I therefore have to request you would have the goodness to hear, particularly to hear this case both on the part of the prisoner, so well as on the part of the public prosecution, and after you have heard the whole case for and against, if by your oaths you can conscientiously acquit the prisoner, in God's name do it. But gentlemen, I now advise you, if you have a tear of sensibility, prepare to shed it on this occasion; for I shall prove to you such cruelty and barbarity on the part of the prisoner, exercised on and over this infant, as will set on fire every capillary vessel of the human frame. Know then, that the lady who is seated by the infant is its real mother; that the father of the child, *John Scott*, is the acknowledged father;

that this Scott, having become acquainted with the prisoner Hannah, at the methodist church, abandoned his lawful wife, who is the mother of the child, and married the prisoner Hannah ; afterwards the husband gets the child into his possession, and Hannah, who has become the convenient wife of Scott, also became nurse to the child ; and while she is thus the new *bride* and nurse, I shall prove that she treated this little innocent in such an abominable manner, as would make an *Algerine blush* at the like barbarity. Gentlemen, I shall prove to you that the prisoner has at different times beat and pounded this infant almost to a jelly ; that she has stamped on its little breast till she had nearly killed it ; that the prints of her shoe is now to be seen on its body, which was done some weeks since. I shall prove to you more, but gentlemen how shall I name it ! my indignation rises at the thought to that degree, I want the power of utterance. I shall prove that this monster, for such I am warranted to call her, in addition to her other cruelties, has pulled out four of the finger nails of this little babe by the roots : Gentlemen, I understand that there are some methodists who are called to support her character, as being very good ; she and Scott being members of their church. It is possible they may swear that Hannah Methodist-wise is very clever and very pious ; but gentlemen, I shall prove the material facts as stated by the most respectable witnesses ; and before I close

the testimony on the part of the prosecution, I shall satisfy you that the prisoner in her barbarity to this infant possessed more demons than did Mary Magdalen, the *ipse dixit* of her friends, the methodists to the contrary notwithstanding.

Mr. Graham then called four respectable ladies, who were all sworn as witnesses on the part of the public, and proved the case, in substance as stated ; also, that Hannah the prisoner had *once broken* the child's arm in going to market but it did not appear whether it was done by accident or by design. Here the prosecution on the part of the public rested.

Verdict Guilty.

General Sessions.

THE PEOPLE,
vs.
CUNNINGHAM. } *For uttering coun-
terfeit Bank Notes.*

J. A. GRAHAM of counsel for the Prisoner, admitted there was some slight presumption against the prisoner, but contended that the jury ought not to suffer suspicions to become convictions. The gist of the indictment is—did the prisoner pass the note *knowing* the same to have been forged and counterfeit. The prosecutor, who is the only witness that can convict the prisoner, comes forward under the most suspicious circumstances, in two points of view—first, his interest, and second, his bad character. Therefore he ought not to gain any credit with a sensible jury like yourselves. By his own confession he is charged with being a notorious offender against those very laws which he wishes to make use of, so far, as to convict the prisoner, and thereby save himself from that punishment.

which his own crimes of passing counterfeit money so justly merits. A man who does not pursue the path of virtue, can never claim at your hands, the character of one who ought to be believed. The witness says, that the prisoner confessed to him in Bridewell, that he had passed a two-dollar note, which was counterfeit. Gentlemen, confessions at all times ought to be received with great caution by courts of law and jurors, even when taken before proper authority, but particularly so, when made to a person of the character such as the witness. The law says, that confessions are the weakest and most suspicious of all testimony; ever liable to be obtained by artifice, false hopes, promises of favor, or menaces, seldom remembered accurately, or reported with due precision, and incapable, in their nature, of being disproved by other negative evidence. The witness says himself, that he obtained this confession from the prisoner, under his solemn promise that he would keep the secret; I would ask, is this man to be believed, under such circumstances, when he himself intends to escape punishment, by divulging this pretended secret? He informs us, that he had been acquainted with the prisoner at Poughkeepsie. The hon. the attorney-general, has produced the confession of the prisoner which was made before proper authority, and of course is made legal evidence *in favor*, as well as against the prisoner. This proves, that he received the note in payment as a good:

note, as such, he had a right to pass it. It is true, he took it in the neighborhood of George-street, the very place which the witness was in the habit of visiting ; and in all probability, he may have procured this very note to be passed off to this illiterate poor man, so as to reap the benefit thereof in whole or in part to himself, without being detected, since he, the witness, first *seduced* the prisoner to go with him to this *sink of pollution*. I do, under all the circumstances of this case, request you, to banish from your minds all suspicions of guilt against the prisoner ; and I feel, that you will let fly from you what this witness has said, as the shades of night disperse at the approach of the grand luminary of the day, to distant countries, and the deep caverns of the earth.

General Sessions.



THE PEOPLE,
vs.
JAMES BLUET. } *On arrest of judgment.*

J. A. GRAHAM—*May it please the court*, the indictment charges the prisoner with having feloniously taken and carried away a *turkey*, the property of Richard Gildersleve, but but does not state whether the turkey was a alive or a dead animal. (The prisoner plead *Not Guilty*, but the jury found him *Guilty*.) I contend, said Mr. Graham, that the verdict is against *both* law and evidence, therefore, by the court, ought to be arrested. My reasons are these—*Turkey* is a substantive, and by Doct. Johnson, is declared to be a large fowl. Now, I would ask, what is a fowl? The same author has informed us, that a fowl, is a *winged* animal.—Then, I would ask, what is understood by a *winged* animal? The same learned author has told us, it is a bird, having *wings*, with which it can fly, and fly

swiftly. Then if so, I humbly contend, that the proof before the Jury, (and to which I objected at the time,) was diametrically opposite to the substantive *turkey*, as charged in the indictment. The witness testified, that the bird was *dead*—had no wings—its head cut off—and had no toes. Therefore, I consider the proof introduced by the hon. the attorney general, to go direct to *destroy* the vital part of the indictment. For instead of its being a *turkey*, it was only the *skeleton*, or *dead body* of a *turkey*. This I take to be sound *logic*, since it could not fly having no wings, and having no head it could not see and having no toes it could not walk. Again if it had have had wings, it could not fly, since it had no head—Ergo, it cannot be a *turkey*, as charged in the indictment, but must be considered a *dead carcase*, and truly a part of a dead carcase of a *turkey*, only, provided Doct. Johnson's definition of a *turkey* be correct—Chief Justice Hale says, that “an indictment is only a brief, and *certain* narrative of an offence, committed by any person, and of those necessary circumstances that occur, to ascertain *the fact*, and its nature,” he adds, “there is great strictness required in indictments,” so much so, that the fact itself, the property, its nature, and its value, must be set out in the indictment, with the greatest certainty.” For instance, “where theft is charged in an indictment or a *living thing* as a *horse*, or *sheep*, (or *fowl*,) the regular way is to say *pretii*; if it be a *dead thing*, that

is estimated in the indictment by weight or measure, there also, it ought to be *pretii*, and so it may be, if it be of any single thing, though *dead*, and not estimated by weight or measure." And here I do contend, that, by the strict rules of law, the present indictment is bad, as it ought to have stated, that the prisoner did, feloniously steal, take and carry away, *a certain dead carcase, the skeleton or corpse of a turkey* which had no head or toes; then the prisoner would have known how to have made his defence, and would have come prepared accordingly. But he was indicted for feloniously stealing, taking and carrying away *a turkey*. To this charge he came prepared; but he did not come prepared to meet and defend a charge not stated in the indictment. His honor the Mayor, will recollect where a man was indicted for stealing a *hat*—when on the trial it proved to be a *felt*, and the judges instantly decided that the indictment was bad. Judge Blackstone, in the 4th vol. of his commentaries on the laws of England, page 375, says, that "a prisoner may at any time, after verdict and before judgment, offer any exception to the indictment, in *arrest* or stay of judgment. As for want of sufficient certainty in setting forth either the person, the time, the place, *or the offence*, and if the objection be *valid*, the whole proceedings *shall be set aside*." This great lawyer did not speak in the doubtful but in the *positive—settled points of law*; and, he adds

that, none of the statute of Jeofails for the amendment of errors, extend to indictments or proceedings in criminal cases, and therefore, a defective indictment is not aided by a verdict—that the greatest strictness, has at all times, been observed in every point of an indictment, and of this the books are full. I beg leave once more to call the attention of the court to the *dead carcase of a fowl*, which was in its lifetime a *turkey*, but was not a *turkey* when the witnesses swear my client first was acquainted with it. Now, if Doctor Johnson is correct in his definition of a turkey, I think I have proved most logically and conclusively that the indictment is defective, and that the judgment ought to be arrested. Again, to shew, that the indictment is defective, and that the property has not been described with sufficient certainty, suppose instead of its being a dead carcase of a turkey, it had in fact, and in truth been a real turkey with wings, head, and toes, and the prisoner could prove that that turkey was *feræ naturæ*, then it would not have been contended, that he had been guilty of *felony* because he would have as good a right to it as any other man; therefore, I do submit for the consideration of the court, that in case the prisoner had stolen the real turkey, before he could be convicted of the felony, it must have appeared on the face of the indictment, whether it was a *tame* or a *wild turkey*; the reason is obvious, since beasts and birds almost

of all kinds, are some of them wild, in opposition to the tame, such as hares, foxes, wild geese, turkeys, and the like, consequently they are the lawful property of him who can get them first into his possession. I am therefore, fully of the opinion, that the indictment does not state the charge *specifically* sufficient, so as to warrant a *conviction*. Let us take into our minds, eye, another view of this indictment. Suppose some of those *heaven-daring* rascals, called in London, "*Resurrection Fellows*," whose business and occupations are to fly in the dark watches of the night, to the silent tomb of the ancient fathers, filch *skulls* and *skeletons* from their hollow vaults, to sell them to the Surgeons of the town. Suppose, I say, they were indicted for stealing *a man*, instead of the indictment's stating the fact of its being *a corpse, skeleton, or scull* of a man, would not the indictment be bad? If so, then is the present indictment also bad.

Oyer and Terminer.




THE PEOPLE,
VS.
GEORGE HART. } MURDER.

J. A. GRAHAM—The crime of wilful and deliberate *murder* is a crime at which human nature shudders—a crime which harrows up every fibre of the soul—and is punished almost universally throughout the world with death. This crime is defined to be “The wilful and felonious killing of any person with malice aforethought, either express or implied, so as the party wounded or hurt, die within a year and a day after the fact.” Malice, therefore, (either express or implied) makes the gist of this indictment. To prove *express malice*, it ought to appear evident that there was some *ill will*, and the killing was with a *sedate mind*, and also a formed design of doing it. Implied malice is, when one kills another suddenly, having nothing to

defend himself, as going over the stile or the like, Hale's P. C. 17. If a person on any provocation beat another so that it might plainly appear he meant *not to kill*, but only to chastise him, or if he restrains himself, till the other hath put himself on his guard, and then, in fighting with him, killeth him, he will *not* be guilty of murder, but manslaughter. I. Hawkins, P. C. 82. Judge Blackstone, in his commentaries on the laws of England, vol. 4. p. 190, says, that the degrees of guilt which divide the offence into manslaughter and murder, consist in this—manslaughter, arises from the sudden heat of the passions; murder from the wickedness of the heart. I contend that the prisoner was not guilty of wilful and deliberate murder. It is true, his conduct was in the extreme, most diabolical, still I do contend that his crime is not murder, but manslaughter. The deceased had been guilty of felony; she had stolen four shillings in money from him, she lived with him as a concubine, and he undertook to chastise her for the felony; therefore, he had no premeditated design in killing her. This has been apparent from all the testimony, particularly as respects his after conduct, that he shewed little or no concern at what had taken place. Now, I would ask, is it among the number of possibles that any person, wilfully guilty of committing so horrid a crime, being in their right mind, without having manifested on the occasion some compunction of conscience, or perturbation of mind? The

prisoner went with the coroner to see the corpse, and Mr. Willis informs us, he shewed no concern whatever. Gentlemen—I shall not go minutely into the testimony, it is apparent that the deceased came to her death by the chastisement given by the prisoner, as is stated by the examination of surgeon Post, whom, we all agree, is one of the first surgeons in America. But I do contend, that the prisoner is guilty of manslaughter, not murder—There had been no previous quarrel, he had taken this woman to his bosom, she fed at his table, and he had passed her as his wife. I cannot for myself, believe, that there is scarcely any man, in his right mind, capable of being so great a monster, as, in cold blood, to commit murder on a person living, as was the deceased with the prisoner. Gentlemen—I know you possess all the reason, light and understanding, which the importance of your situation demands in deciding between the prisoner and the public. But, I charge you, that while in your inquiries, which you are about to make in discharge of the duty you owe to the public, remember, that you owe a debt of the greatest magnitude to the prisoner, which I hope and trust you will most conscientiously discharge. When I look at the prisoner, I feel a crust of icy coldness gathering round me. The wild and awful scene of gallows-hill presents itself, with all its horrors to my view. Then, I cast my eye towards the

hon. the attorney general, when the vision in part dissolves: looking farther up to the learned Judge, the dawn of day, in favour of the prisoner, begins to brighten, and the judgment seat appears to have the effect of enchantment.

 *Verdict. Guilty.*

(Prisoner Executed the 3d. of January, 1812.)

General Sessions.



THE PEOPLE,	}	<i>Assault and Battery.</i>
vs.		
CHARLES FORREST.		

J. A. Graham, of counsel for Forrest, contended, on the ground of *son assault demesne*, under the plea of not guilty, that it was the complainants own original assault, that occasioned Forrest to strike the prosecutor I must remark to you, gentlemen of the jury, said Mr. Graham, that I most sincerely deprecate the growing evil resulting from petty quarrels of this nature by our citizens. The troubling of courts and jurors, by parties who court litigation, and feast their mental appetites on persecuting one another, and at the same time, at the expence of the public, I say, is an evil greatly to be deprecated. If such parties were driven to a civil suit, instead of adopting this mode of procedure to glut their malice and revenge, we

should soon see the calendar of this court lessened by one half of its numbers. We read that the persecutors of the persecuted, are swifter than the eagles of the Heavens, and the persecutor, here (prosecutor) tells you, he is in full gallop in his chase to magnify the law, and to make it honorable. But remember that the liar will *speake lies ; lies* which he knows are more venomous than the poison of a serpent, if it were only because he would not wish to be found in company of truth and virtue.—Reason, gentlemen of the jury, is given to man, that he might walk by its light. Therefore let us endeavour to acquire knowledge of all the facts in this cause, which may influence you as jurors ; and do all in your power, that your knowledge be as distinct as possible, for as jurors, you may truly be said *only* to know that which you know without error and confusion. If you walk by the light of that reason, which I know you possess, I have nothing to fear for my client. The evidence against my client is negative testimony *only*, while on the contrary, ours is positive and most unequivocal. The prosecutor was beating and flagellating his wife, whose cry of murder drew my client to the scene of action, and on his interfering to save a helpless woman from the paws of a savage husband, the prosecutor after calling Forrest by all the harsh epithets known in the English language, challenged him out to fight, when they had arrived in the street a scuffle ensued, and my client proved

an over match for the complainant ; in consequence thereof, he eagerly flies to the police and procures him to be indicted. And for what, gentlemen ? Because Mr. Forrest hearing the cry of murder, acts not only the humane part, but also like the good *Samaritan*, in rescuing a helpless female from the brutality of a man who, at the altar, promised in the presence of his maker that he would through life, treat her kindly and affectionately. And if there is a third person who can stand by and see a husband cruelly beating his wife, (except the prosecutor,) I would assist in hooting him from society. Now gentlemen, I do insist, that in case you consider the testimony as I do, and examine the whole features of this cause, I feel confident we shall have your verdict of not guilty, since our proof is positive, and theirs is merely negative.

General Sessions.

THE PEOPLE,
vs.
SEBRAY BOGERT. } *Assault & Battery.*

J. A. GRAHAM—*May it please your honor, and you gentlemen of the jury, I appear not so much to advocate for the prisoner, as I do for the honor of our holy religion. My learned friend Mr. Wilson, who has already summed up the cause, has gone so minutely into the testimony, and drawn such logical conclusions, that it leaves but little room for me for comment or argument ; but I beg leave to call the attention of the jury so far as to travel with me to the spot and examine the place, the time, and the particular attending circumstances where this pretended assault and battery is said to have been committed. First, it was committed at a building which is progressing in its completion for the accommodation of christians, that they may be en-*

abled to worship there "*the God of their fathers*," this was the place. I would ask what was the day: I answer as did all the witnesses, it was the *holy sabbath*, a day which all men are commanded to keep holy.

Let me, gentlemen, request you for a moment to examine with me the indictment, and you will see that the inference I shall draw between the testimony and indictment is just and conclusive, so much so, if you use the light of that reason which the almighty has given you for your guide, you must find the prisoner guiltless. The proof before you is, that this accident happened in Doctor Mason's church, which is now in building, and also, on a Sunday. This indictment declares that Morrison, on that day, was assaulted and beaten by the defendant, while Morrison^{or} (as the indictment also states,) was in the fear of God. To this I demur, since the testimony does not go to prove the fact, but on the contrary, goes fully to prove that Morrison was not on that day "in the fear of God," unless you can find by your verdict, that breaking the Sabbath is having the fear of God before one's eyes. I do therefore contend that, instead of Morrison's being on that day, "in the fear of God," we are warranted by scripture, in saying that he was, by so breaking the Sabbath literally and truly in the service of the devil. This is the fair conclusion to be drawn, particularly, since it appears by the testimony that what was done by the prisoner in turning off Morrison

from the scaffold was merely accidental, and at a place where the prisoner was stationed as a guard to see that no injury was done to the building.

Again Morrison was a trespasser—had been ordered off from the building repeatedly : he as often peremptorily refused to go. And not only a trespasser but was also, at the very moment breaking that very commandment wherein we are all commanded “to keep holy the Sabbath-day.” Gentlemen, this brings to my recollection a Jewish tradition of Moses which I think ought to be related.

“Moses one day had a conference with the almighty on the mount, when he was ordered to look into the plain—he saw a trooper ride up to a spring, who alighted from his horse to quench his thirst, as he stooped down to drink he dropt a purse of gold, but not knowing it he mounted his horse and galloped off. A few minutes after a boy who was travelling that way and who was also thirsty, stooped down to drink and picked up the purse the trooper had let fall—so walked away. A short time after an aged grey headed man, who was also travelling that way, being fatigued and most worn out with years, sat down on a stone by the spring to rest himself. The trooper having missed his purse of gold, returned immediately to the spot where the old man was sitting, and charged him with having stolen it ; the old man protested that he was innocent, and called heaven to witness what he said. The trooper

not believing him, flew into a rage, drew his sabre and cut off his head. Moses astonished at the sight, was about to inquire of the almighty, why and wherefore he governed the world.—Moses, said the almighty, you must not inquire why, or wherefore I govern the universe, this much thou mayest know concerning what thou hast just seen, but no farther. Know then, that the child who found the purse of gold was the cause of the old man's death, but remember that the *old man was the murderer of that child's father.*

By this tradition of Moses, we learn that the trooper, the purse of gold, and the youth, were the agents made use of by the almighty to destroy the man who was the murderer of the child's father. So, also, we may justly conclude that Bogart, who had the charge of the church, was, likewise made use of to chastise Morrison for his breaking the Sabbath. The wise man has said "that a curse causeless shall not come," we may therefore infer, that whatever Morrison received on that occasion, he justly merited—as it was a thing of his own seeking, and his own first transgression. I charge you therefore, as you value and respect our holy religion, that you pronounce by your verdict the prisoner guiltless. This will prove a good lesson to *all* Sabbath-breakers in future, and also, correct the moral understanding of Morrison, the complainant.

Oper and Terminer.

THE POEPLE,
vs.
FARMER. } *Manslaughter.*

J. A. GRAHAM—*May it please your honors, and you gentlemen of the jury, the ground of my defence for the prisoner, I consider a legal one, and when we have reasoned together, I think you will agree with me in opinion, that it is conclusive in his favour. I contend, that instead of the prisoner's having been guilty of manslaughter, as charged in the indictment, the act is, excusable homicide, in self-defence—I mean that self-defence whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him.—Judge Blackstone says, “the true criterion between homicide upon chance medley in self-defence, and manslaughter, seems to be, that when both parties are actually combatting, at the time when the mortal*

stroke is given, the slayer is guilty of manslaughter ; but if the slayer had not began to fight, or having began, had endeavoured to decline any further struggle, and afterwards, being closely pressed by his antagonist, kill him, to avoid his own destruction ; this is homicide in self-defence." Some of the most learned elementary writers who have written on the subject of *self-defence*, particularly the great Mr. Locke, says, "that all manner of force, without right upon a man's person, puts him in a state of war with the aggressor ; and, of consequence, that, being in such a state of war, he may lawfully kill him that puts him under this unnatural restraint."—I have not quoted Mr. Locke as a legal authority, but merely to shew, that he considered *self-preservation* as the first law of nature. Gentlemen, I beg leave to call your attention to that celebrated *maxim*, which has stood the test of ages, viz. "all crime in the eye of the law, must be measured by the intent of the will." The crime of which the prisoner stands charged in the indictment, is of great magnitude ; as such, there is always danger, least honest abhorrence of a crime of this nature, should raise the passions, with too much violence, against the man to whom it is imputed. Permit me, therefore, to remark, that you ought then, as jurors, in proportion as guilt is more enormous, to ascertain the enormity of that guilt, by the strongest and most positive evidence, before you pronounce

a verdict of guilty. I now hasten to call your attention to the circumstances attending this unfortunate transaction ; but first let me observe, that this case, like almost all others, stands upon its own merits, and I challenge the honorable the attorney-general, to produce a case like the present, which has ever been published in Europe or America. The prisoner, in company with a sailor, was *sky-larking* in the street, in friendship and good cheer, when the deceased, (Grimes,) came up behind the prisoner, with whom he was not acquainted, and with his fist gave the prisoner a violent blow in the face, and the blood instantly gushed from his nose. The deceased then stepped four or five steps into the street, and the prisoner instantly on wiping the blood off his face with his hand, stepped up to Grimes, and with his fist clenched, struck him under the chin or side of the neck ; Grimes fell, in falling hit his head against the wooden curb, which broke his skull, and he soon expired.—These are the facts now before you. I would ask, are you prepared to say, this was manslaughter ? God forbid ! Is there one of you, that would not have done the same, had you been placed in the same situation ? Lay your hands to your hearts, and your consciences will give the answer. Let us try this case in another point of view. Suppose *Grimes* had not died, but that the prisoner was now on his trial for an assault and battery committed on Grimes, and the prisoner pleaded

~~an assault de meurtre~~, that is, Grimes committed the original assault ; would you not instantly pronounce by your verdict, the prisoner guilty ? If so, then you ought in the present case.

The prisoner used no unlawful weapon, he had received a most violent blow from Grimes ; and the prisoner almost instantly returned the blow with his fist, (believing he was attacked by an assassin,) which proved fatal to the original transgressor. Can this be considered, by men of sense, any thing else but *self-defence* ? I think the case of Lovell, is in point.—Lovell had two *maid-servants*, and one of them, without his knowledge, had received into the house a *chare-woman*, who, (all being in their beds,) by her negligence let a thief into the house, and afterwards called out thieves, thieves ; and afterwards Lovell came out of his bed with a sword in his hand, and the *chare-woman*, calling to mind, that she was there without his privity or his wife's, hid herself behind the dresser, Lovell's wife espying her there, cried out thieves, thieves, upon which Lovell came and ran her into the breast with his sword ; and the opinion of all the justices at the old Bailey, and also all the justices of the King's bench was, that it was neither murder nor manslaughter ; not murder, because there was no forethought malice ; nor manslaughter, because he supposed her to be a thief ; and if she had been a thief, then it was clear it was not

manslaughter. I contend, that our case is a much stronger case in favour of the prisoner, as he not only *supposed* he was going to be murdered or robbed, but he was, by the deceased, attacked in a manner, which is *self-evident* he intended to rob, or murder him. If *Ford's case* was justifiable, then is also the prisoner at the bar justified in what he did. A. with other company, *was in the Vine Tavern, in Holborn, in a room, and some other company* bringing with them some women of ill-fame, would needs have the room, where A. was, and turn him out; to which A. answered, that if they had civilly desired it, they might have had it, but he would not be turned out by force; and therefore they drew their swords on A. and his company, and A. drew his sword and *killed one of them, and it was adjudged justifiable.* Gentlemen, let us for a moment look at the fountain of English jurisprudence, and contrast the present case, with one where all the judges held it but manslaughter. A gentleman at the bar, (Mr. Turner,) upon his *wife's complaint that the boy had not cleaned her clogs, took up a clog and killed him, without any other provocation,* and held but manslaughter. Chief justice Holt, said Mr. Turner's case is an *unlucky* thing. Fortunately indeed, gentlemen, was it for Mr. Turner, that he was a *gentleman of the bar*; had he have been a *poor negro*, like the prisoner, I am inclined to believe, he would undoubtedly have died under the gal-

lowr. I have called your attention to these remarks, to prove what I first stated, namely, that *every case must stand upon its own merits.*

I deprecate most sincerely, the unfortunate circumstance, that took place between the deceased and the prisoner ; it was *an unlucky thing* ; but the prisoner, in my opinion, is *blameless*. If my head was an atlantic ocean of water, and my eyes a fountain of tears, I could freely shed the whole, could I but blot out the transaction, and again restore to life, the unfortunate deceased. Again gentlemen, I call upon you to have a continual reference in your deliberations to the divine *will* ; and an eager appeal to everlasting justice, and an unvaried elevation of the intellectual eye to the reward which justice to the prisoner only can obtain. I hope there is "some tender cord, tuned by the hand of the great creator, that still struggles to emit in the hearing of the soul, a note of sorrowing sympathy for the prisoner."—Of him that hopes to be forgiven, it is indispensably required, that he forgive—It is therefore, superfluous to urge any other motive. On this great duty, eternity is suspended, and to him that refuses to practice it the throne of mercy is inaccessible, and the Saviour of the world has been born in vain.

General Sessions.



THE PEOPLE,
VS.
WILLIAMS.

} *Bigamy.*

J. A. GRAHAM—one of the counsel for the prisoner, observed, that the prisoner was indicted on the statute which was made for the prevention and punishment of bigamy, to which indictment he has pleaded not guilty. I admit, gentlemen, said Mr. Graham, that this negro has married two wenches in our city, within the last two years, and that they are both now living—but notwithstanding, I contend, he is not guilty of the crime of bigamy. The prisoner is the negro slave of Samuel Snowden, Esq. of the state of Virginia, where negroes, by the laws and statutes of Virginia, are saleable as chattles, and by the constitution and laws of this state, the master has a right to remove him to his own plantation in Virginia,

where the negro was born. The master may also maintain an action against any one who retains or harbors, or detains from his service this *slave*. I do insist, that the prisoner is a person that does not come within the *spirit and meaning* of the act of the legislature, by which he is now indicted. The marriage contract is a *civil contract*, as such, the prisoner stands on the same footing respecting this kind of *traffic*, as he would do in attempting to make any other species of contract. I would ask then, what is a contract? A contract is an agreement upon sufficient consideration, to do or not to do a particular thing; and there must be a consideration of some sort or other, to the forming of a contract, that a *nudum pactum*, of agreement to do or pay any thing on one side, without any compensation on the other, is absolutely and totally void in law. Gentlemen, let us examine the law on which the present indictment is founded, and who made this law? The law was made by a legislature who intended the same should effect *free men* and *free women* who transgressed; but not *slaves*. This legislature well understood that *freedom* was an indispensable requisite for man before he could have a will of his own, sufficient to bind himself by *civil contract*. The providing clause of the act for punishing bigamy, says, "*that it shall not extend to those persons who marry within the age of consent.*" I do contend, that a *slave* is always within the

age of consent, since he cannot make a civil contract, that is binding in law during the time of his slavery. The reason is palpable and conclusive, as the master is answerable for all trespasses done and committed by his slave, save and excepting those of a criminal nature, which the slave is himself personally answerable for. And every person who shall trade, traffic, or contract, with the slave, are, by the act regulating of slaves, &c. liable to the master in damages. There is not a word, no, not a single iota, in the law on the subject of punishing of slaves for the crime of bigamy, and for very obvious reasons, the idea is not only preposterous, but is in itself, completely laughable; we might as well indict a *monkey* or an *ourang-outang*, for the crime of bigamy as to indict a negro whilst *chained down in slavery*. The honorable the attorney-general, agrees with me, that the marriage contract is a *civil contract*. I therefore would ask, if it is not very uncivil to indict this poor slave, for having attempted to traffic in a *civil thing*, when by force and effect of his slavery, he is prohibited from making any such contract? Again, it, does not appear, that either of the wenches were free; the presumption therefore, is, that they themselves are slaves, and until it should appear, that one of them at least, was not a slave. If the prisoner at the bar was himself a free man, he could not be found guilty of bigamy, since the wench, which is not free, could not make such

a traffic or civil contract, without the consent of her master, it must appear, that the parties were *sui juris*, and competent to contract. We find by the law of *Moses*, that a man may be a slave, and a slave was a chattel, *his master's money*—Exodus, chapter 21, verse 20, 21. By the constitution of the state, and also of the U. States, if I imprison my negro slave, a *habeus corpus* will not lie to deliver him, he must be *liber homo*. Thus we find, that Mr. Snowden, the master of this slave, has the right of having and enjoying the bodily services of the slave, which wholly incapacitates him from making any civil contract whatever. Having thus expounded the law, I would ask, shall a man be tried by the forms and rules of the law, and be condemned contrary to the law? God forbid! Perhaps the honorable the attorney-general, may say, that our holy religion is in danger, and demand security, that this kind of traffic and commutation among slaves will sap the foundation of all morality; if so, I shall most readily agree in opinion, with that gentleman; but, to effect a cure for the evil, do not by committing a trespass on the law, cut off a twig or a limb of a tree, but lay the axe to the root. What a nation of free men, and hold our fellow-citizens in slavery? this is the evil—*make the slave free, there is the remedy.*

General Sessions.



THE PEOPLE,
VS.
DOUGHERTY. } *Arrest of Judgment.*

J. A. GRAHAM—*May it please the court*, I rise in the case of Dougherty, to make a motion in arrest of judgment. My reasons are these : It is a fundamental rule of construction, that penal statutes *shall* be construed strictly. It was one of the laws of the twelve tables of Rome, that whenever there was a question between liberty and slavery the presumption should be on the side of liberty. This excellent principle our law has adopted in the construction of penal statutes ; for wherever any, ambiguity arises in a statute introducing a new penalty or punishment, the decision *shall* be on the side of lenity and mercy, or in favour of natural right and liberty. Or, in other words, the decision of the court *shall* be according to the *strict letter*

in favour of the citizen. And it is more consonant to the true principles of liberty, that the court should acquit whom the legislature intended to punish, than that they should punish whom the legislature intended to discharge with impunity, 1st. vol. Black. page 88. I contend that every indictment on a penal statute, must contain the words as declared by the statute, descriptive of the offence *verbatim et literatim*, otherwise the indictment is bad. The prisoner is indicted on the statute which is in the following words, (to wit :) That if any person shall falsely make, alter forge or counterfeit, or cause or procure to be falsely made altered forged or counterfeited, or WITTINGLY act or assist in the falsely making, altering, forging or counterfeiting, or uttering and passing the same, &c. knowing the same, &c. shall be deemed guilty of felony, and punished with imprisonment for life in the state-prison, or *such period as the court having cognizance of the offence may in their discretion* deem proper, fifth vol. of the laws of N. York, page 337, passed April the eighth 1808. The fourth section of this act says, "That every person, who shall hereafter be convicted of any offence against the first section of the act entitled "*an act to prevent forgery and counterfeiting*, passed March 22d, 1801, and not provided for in the next preceding section, shall be guilty of felony, and punished with imprisonment in the state-prison for a period not exceeding fourteen years." The indictment states "that John-Dougherty with force and arms,

&c. feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and WILLINGLY act and assist in falsely making, forging and counterfeiting, a certain promissory note for the payment of money, commonly called, a bank note, which said false, forged and counterfeited promissory note, &c." Second count for uttering, &c. against the statute, &c. (*The jury found the prisoner guilty generally.*)

The question for the consideration of the judges is, can the indictment by any possible construction or implication be supported, the *clerk* of the attorney-general having neglected to pursue the *very* words of the statute by leaving out the word "WITTINGLY," and inserting only that the offence was committed WILLINGLY. I would ask your honors, what is the true received common-sense signification, of the word WILLINGLY? I answer that its true meaning is, neither more nor less, than, an inclination to do a thing, a kind of *negative desire*. On the contrary what is the true signification of the word WITTINGLY? It is derived from the saxon verb witten, "*to know*," and its true meaning is quickness of fancy, a man of genius, understanding, judgment, sense, subtlety. Now, I would ask, because a man is WILLING to do a thing, (be it right or wrong,) does this make him a man of genius, sense, judgment, subtlety and understanding? Common sense says no! In short, the two words WITTINGLY and WILLINGLY differ as much in their meaning one from

the other, as *a comet* differs from the sun. This was the view which the legislature had of the subject when they made the statute of April 1808 ; considering the word WITTINGLY indispensably necessary as a description of the offence. To satisfy the court on this point, as to the meaning and intention of the legislature I refer to the statute of March the 21st, 1801, 1st. vol. of the laws of N. York, page 251, where the word WILLINGLY was made use of, in the act ; but the legislature discovering afterwards that the word WILLINGLY was not sufficiently expressive of their meaning as a description of the offence ; they passed the act of April 1808, using the word WITTINGLY, so as not to be misunderstood ; and to correct the evil complained of. We all know that an old statute must give place to a new statute the same as the common law gives place to the statute when they differ ; and this upon a general principle of universal law, that "*leges posteriores priores contrarias abrogant.*" I consider the case of *Rex vs. Davis* in point. Lawyer's magazine vol. 1st. page 391. The British statute declared " that if any person or persons shall *willfully* and *maliciously*, &c. shall be guilty of felony, &c." The indictment against Davis was, that, he the said Davis, did *unlawfully*, *maliciously* and *feloniously*, &c. The question was whether the indictment could be supported the drawers of it having neglected to pursue the *very words* of the statute, by leaving out the word *willfully*, and inserting only the offence.

was committed "*unlawfully, maliciously and feloniously.*" On the 22d of Feb. 1789, all the twelve judges of Eng. assembled at *lord Kenyon's* house, to consider the question; and the point was very much debated, some of the *judges* thought, that the word *willful* was implied in the word *malicious*; but a great majority were clearly of opinion, that as the legislature had by the special penning of the act used both the words "*willfully*" and "*maliciously,*" they must be understood as a description of the offence, and that the omission in the present indictment was fatal to its validity. The prisoner was accordingly ordered to be discharged. I contend that the statute of April 1808, must govern in this case, over the statute of March, 1801. Then if so, the omission of the word "*WITTINGLY,*" in the present indictment is fatal; and the substitution of the word *WILLINGLY*, which is contained in the old statute being of different import and meaning cannot support the indictment, unless the spirit, meaning and intention of the legislature in their act of 1808, is considered by the court as a mere nullity. Again, to satisfy your honors that the ground I have taken is a solid ground, one that must crown my motion with success, I beg leave to call the attention of the court for a moment to the statute of April 8th, 1808, and see what is the punishment for the crime of which the prisoner is charged in the indictment, (to wit,) *imprisonment for life in the state-prison, or such period as the court, having cognizance of the offence, may in their discretion*

deem proper. This being the case I contend that the statute having created a new penalty for the same offence of that of the statute of the 21st. of March, 1801, entitled an act declaring the crimes punishable with death, or the punishment with imprisonment in the state-prison, &c. for forgery, counterfeiting, &c. to be imprisonment for life in the state-prison; giving the justices who try the cause power *only* to say under all the circumstances of the case whether the offender be imprisoned only, or be kept in the said prison at hard labour, or in solitude, or both. In "*the act to prevent forgery and counterfeiting of March 21st, 1801,*" the statute declares the crime of forgery and counterfeiting to be felony; but it does not point out any punishment whatever. This is the act in which the word *WILLINGLY* was penned by the drawers of the act as a description of the offence, and is the word made use of in the present indictment. The *fourth* section of the act of April the 8th, 1808, which I have already recited, the court will recollect has reference to "an act to prevent forgery and counterfeiting," passed March the 22d 1801, declares the punishment to be in the state-prison, for a period not exceeding fourteen years.

I contend, also, that the judgment ought to be arrested on another ground. The indictment concludes *contra formam statuti*; whereas, when an offence is prohibited by several independent statutes, the indictment must either conclude *contra formam statutorum*, or *contra formam*,

of the particular statutes naming them, therefore the present indictment for not shewing on which of the statutes it was taken, is insufficient. C. Eliz. 760 ; 2 Leonard, 5 ; Dalton C. 135. The statute of 1808, adds a new penalty to the offence prohibited by the old statute of 1801 ; and the indictment has concluded *contra formam statuti*, without naming the particular statute. To my mind, the reason is manifest, that the omission is fatal to the indictment ; because, by the old statute, the judges are *bound* to sentence the prisoner for *life* to the state-prison, without having any discretionary power whatever ; whereas, by the statute of 1808, they have granted them discretionary powers. This goes fully to prove the principles I have already advanced to the Court that old statutes must give place to new statutes. The legislature never intended a citizen should be tried for an offence, without having the words descriptive of that offence, as declared by statute, strictly pursued in the indictment, that the accused might meet his accuser according to the letter of the law, and facts ; and the Court, thereby be enabled to proportion the punishment according to the nature of the offence, agreeably to the intention of the legislature. What ! shall a citizen be indicted by the words and forms of a new statute, and be punished by the penalty of an old statute ? or, *vice versa* ? God forbid ! This doctrine might do under a monarchy, or under a military despot ; but it can never take in a free government like the United States. I there-

fore hope and trust, that your honors will see the importance of protecting the liberty of the citizen, by carrying fully into execution, the intention of the legislature, in seeing that every indictment, on a penal statute, shall declare the particular statute on which it is founded ; that it strictly pursue those words of the statute that are descriptive of the offence : and it is to be hoped, that this court will suffer no argumentative certainty whatsoever to induce them to dispense with it. For if the court should ever be prevailed with to do it in one case, the like indulgence would be expected from the public prosecutor in others, nearly resembling it ; and then in others resembling those, and so on *ad infinitum*.

Again, if it were possible to support the indictment, it must be supported by virtue of the statute of April, 1808. The very act wherein the legislature in penning the law specially used the word WITTINGLY as a description of the offence, the omission of which, in the present indictment, I contend is fatal, and that judgment upon every principle of law, ought to be arrested.

General Sessions.

—177000—

THE PEOPLE,
vs.
DAVIS. } *Assault and Battery.*

J. A. GRAHAM—*Gentlemen of the Jury*, Davis is indicted by his wife for a pretended assault and battery, which he denies.—I myself have always been of the opinion that people of sensibility would endeavour to draw a veil over unfortunate family transactions, so as to hide them from the face of the world. This was the sentiment of the prisoner, otherwise he would have exposed her baseness long since. Now the wife after having afflicted and tormented, till she has made him drink of the cup of affliction to the very dregs, has seen fit to drag this poor man into a criminal court. It therefore becomes my duty as an advocate, to give you a short history of the prisoner and also a sketch of what I intend to prove of the character of the prosecutrix. The prisoner is an old revolution-

ary soldier, and has been a patriot from his youth—was in the battle of Bunker's-hill, where he received a wound which cost him the loss of one of his legs ; that he is a most humane, benevolent man, and has always treated his wife with great kindness and attention, while on the contrary, I shall prove that the wife is a perfect *fury*, particularly so since she has taken a maggot of jealousy into her head that he is not true to her bed. Gentlemen, we all know that woman was made for man—she was designed to be his help mate, not to tease and torment him, and so long as she conducts with propriety and affection towards her husband, it is his bounden duty to treat her as the apple of his eye. Mrs. Davis seems to possess all the virtues of the *witch of Endor*.—Nothing will satisfy her but the total destruction of the object of her jealousy. But remember Joseph was falsely accused, so is Davis—as the first was innocent, and most honorably acquitted, so will be the latter by your verdict. I shall prove to you that the prosecutrix is the most fiery, masculine, and blood-thirsty of any woman this court or jury ever saw—in short, she is a disgrace to her sex, and may be justly compared to that famous *herb* which grows in Italy, called *Basilisco*, which has a pleasant smell, but possesses this strange property, that being laid under a stone, in a moist place, in a few days it produces a Scorpion.—Thus, though the prosecutrix in her first creation, was intended as a help for

man, the partner of his joys and cares, the sweet perfume and relish to his days, throughout his whole pilgrimage ; yet she has so far degenerated from her primitive institution, that she has proved more intolerable than Scorpions, not only tormenting the life, but is hastening the death of her poor husband. All which I intend to prove by the witnesses which I shall now produce, and shall expect at your hands a verdict of acquittal.

Verdict Not Guilty.

General Sessions.

THE PEOPLE,
vs.
M. VAN BUSKIRK, } *For Passing Coun-*
Spinster. } *terfeit Money.*

J. A. GRAHAM.—*Gentlemen*, the prisoner is indicted for uttering and passing two counterfeit notes, knowing them to have been forged; one of ten, the other twenty dollars. The last note said to have been passed to Mrs. Wicks, and the one of ten dollars to Mrs. Keith, both on the same evening about nine o'clock, all of which the prisoner denies; and it is for you to say whether she is guilty or not guilty of the charge. I admit so far as Mrs. Keith and Lydia Fowler have sworn, that two counterfeit bills were that evening passed by some female, but I deny the prisoner's having had any knowledge or agency in the transaction whatever, although the two witnesses have sworn positively to the identity of the prisoner.

To rebut this positive testimony, we have proved by Hannah Reives, and Hannah Prosser, an *alibi*. They both swear, that the prisoner was that evening, from dusk till eleven o'clock at night, in her own house: that she was not out of the same room where they were with her, till her husband came home about eleven o'clock.—Gentlemen, the good character of the prisoner, her being a communicant in one of our churches, a married woman, having eight children, and living happily with her family as proved, are circumstances so strong in support of the *alibi*, it must, in the estimation of truth and virtue, outweigh the testimony produced on the part of the prosecution. Mrs. Keith and Lydia Fowler may have intended to swear in good faith, but they are most assuredly mistaken as to the identity of the prisoner. The present case stands precisely as did the case of Thomas Hoag, for bigamy, in June, 1804, which was tried within these walls. On that trial a number of witnesses were called, who swore positively to the person of Hoag: that he was the very man, whom, on the twenty-fifth day of December, 1800, married in Rockland county, one Catherine Secor; his lawful wife then being and living in the city of New-York. On the part of the defendant, a large number of the most respectable citizens testified, that Hoag was on the very same day, in our city, and was one of the city watch, as appeared by the city books; as such, was on duty the same night in New-York.

Thus, by this complete *alibi*, the prisoner was by the jury instantly acquitted.

Gentlemen, it is my duty, as advocate for the prisoner, to see if she were guilty of the crime with which she is charged; that she is convicted according to those rules and forms which the wisdom of the legislature has established as the best protection of the liberty and the security of the citizen. Let us examine the indictment: we find the prisoner is indicted as a *feme-sole*; (a spinster) whereas all the witnesses testify, she is a *feme-covert*, (her husband now in court.) I contend this is fatal to the indictment, because the evidence before you contradicts what the grand jury have found.— You will readily see the propriety of this reasoning, and how important it is that the indictment should have stated that the prisoner was a *feme-covert*, when we examine the law. Mr. Justice Blackstone, in his commentaries, vol. IV. p. 28, in defining the law with regard to the matrimonial subjection of the wife to her husband, declares it so to be, that in some cases, the command or authority of the husband, either *express* or *implied*, will privilege the wife from punishment, even for capital offences. And therefore, if a woman commit theft, burglary, or other civil offences against the laws of society, by the coercion of her husband, or even in his company, which the law construes a coercion, she is not guilty of any crime, being considered as acting by compulsion, and not of her own will.

If the prisoner had passed the bills under the coercion of her husband, she could not be let into that defence, since the indictment declares the female who passed the bills, a *feme-sole*, a spinster; one that was never married; and we cannot travel out of the record. Therefore, I contend that the prisoner at the bar is not the woman against whom the bill of indictment was found by the grand jury. The law holds, that it is better that ten guilty persons escape, than that one innocent suffer. How often do we see and meet with cases where persons have been convicted for crimes, and even executed, and afterwards it turned out that they were innocent? At a late session of this court, one *Agnes Mall* was indicted for a *misdemeanor*, of which she was found guilty, and sentenced to Bridewell. A few days afterwards, his honor the Mayor having presented him the positive and most unequivocal proof of her innocence, that learned and humane judge, Mr. Clinton, prompted by his usual humanity and love of justice, instantly ordered her to be discharged. Gentlemen, please to recollect, these bills were passed in the evening, and by candle-light: the woman that passed them, had on one of the large New-York *coal-scuttle* bonnets, and the witnesses swear that they never saw her before nor since, till she was taken up. I would ask how it is possible, when part of the visage was covered by this bonnet, the witness can be positive as to the person of the prisoner? To prove to you the *fact*

ability of man, how liable we are to be mistaken as to the identity of the person of a man or woman, and how cautious courts and jurors ought to be before they pass judgment against a person for a felony, whose character stands as does the prisoner's at the bar. I shall cite a case which happened in Scotland, in July, 1806, and published at Greenock the 14th of January, 1807.

"In July 1806, a corpse was found on the mountain of Ramas, in the commune of Valgossery, district of Grenoble. The hand was bruised, an old scar was observed on the right shoulder, and one thigh was contracted. The people of the neighbourhood soon began to talk of the affair, and they recollected that one Peter Turc, of the commune of Venose, had about a month before complained of having been robbed of a mule, and intimated his suspicion of James Turt, his youngest son, who was married, and resided at Valgossery. They said that his father went into a violent passion on the occasion, and that his two other sons took his part, and implicated their absent brother in the robbery.

Several of the neighbours pretended to remember that James Turc had a scar on his left shoulder, and it was known that his thigh was contracted; and a report was spread, that the skeleton was that of James, who had been murdered by his father and brothers; even some of the relations of the family declared, that they had recognized the body. James had left his father's house some time before

this event, but his father and brothers used to say, that they supposed he had come in the night and taken off the mule.

A short time before the discovery of the body, a quantity of blood had been observed along the road which led to the mountain, and the father was met the same night with a sack on his back, when being asked what it contained, he said fresh meat which he had just killed!

It unfortunately happened, that James Turc had absented himself from home at the time of this discovery; his father's family were in consequence thrown into prison, and James's wife went into mourning for her murdered husband. On the 29th of September, while the family was in confinement, a letter was received from James by a friend, at Valgoffrey, which stated that he was in good health, but had been obliged to leave his residence. This letter, however, was supposed to be a fabrication, to save the family, and they were brought to trial; a bloody shirt was produced, which had since been found on the mountain, and everything seemed so strong against the family, that they were on the eve of condemnation! While the examinations was going on, a man rushed into court in a paroxysm of despair, declared that he was the identical person supposed to have been murdered, and demanded the release of his father and brothers. The magistrates, overcome with surprise, sent for his wife, who flew into the

arms of her husband, and every doubt was decided. The father and his two sons were instantly acquitted; but their grief occasioned by the charge, had afflicted them with a serious illness. The interview was so affecting, that the whole of the spectators burst into tears. Thus a family, who was despised by all the neighbourhood, was suddenly restored to honor: a wife found her husband; a daughter, whose marriage had been broken off, through the accusation, was united to her lover. In short, six persons were restored from misery to happiness, by an act of Providence. It was soon afterwards proved, that the corpse was that of a traveller who had been overwhelmed by an avalanche."

Gentlemen, I could cite many other cases in point, but do not think it necessary to detain you: suffice it, then, to observe, as my heart beats at every throb in favor of the prisoner; so also, I hope and trust, that your deliberations and verdict in this case will be such, that when the trumpet of the Almighty shall be given to "*the angel who shall swear by Him that liveth for ever and ever, that time shall be no longer,*" and the stars of heaven quit their orbits, and dart to this earth to snatch here and there a saint from the burning chaos of confusion, you, and each of you, may be of that blessed number that shall be wafted to heaven's chamber, there to drink of the fountains of endless pleasure and happiness.

The jury retired for ten minutes, and returned a verdict of *Not Guilty*.

General Sessions

THE PEOPLE,

vs.

B. — F.

Assault and Battery.

J. A. GRAHAM—Gentlemen of the jury, in stating our defence it is important to my client, I should give you a short sketch, of the circumstances attending this pretended assault and battery, as sworn by Mr. S.—S.— who, is the real complainant against the prisoner. But before I proceed to state the facts, I think it proper to submit for your consideration the law, that you may with more ease

and facility apply it to the facts as we progress in our examination. Know then, that in all batteries, an assault is imputed, because there cannot be a battery without an assault; but there may be an assault without a battery; therefore a man may be indicted for an assault and battery, and may be found guilty of the assault only, in some cases a man may justify a battery, or even a man may in some cases

of an assault of his person. For instance, if the defendant proves that the complainant first lifted his staff and offered to strike him, it is a sufficient *assault* to justify his striking the complainant; and he need not wait till the complainant has actually struck him, but *every* assault will not justify every battery. It is always matter of evidence whether the assault were proportionable to the battery, and therefore though the plaintiff set out a *maihem* in his declaration, yet the plea of *non assault demesne* is the same; and he need not plead that the plaintiff *maihemasset et vulnerasset* the defendant, *nisi*, &c. Salk. 642.

But that must appear in evidence; that is, it must appear that the assault was in some degree proportionable to the *maihem*; and therefore in the case of *Cockroft vs. Smith*, Holt ch. just. directed the jury to give a verdict for the defendant, the first assault being by *tilting* the form on which the defendant sat, whereby he fell; the main was, that the defendant bitt off the plaintiff's finger, 1st. Ray. 377.

Gentlemen, I shall establish beyond all contradiction, by the most respectable witnesses that the complainant committed the first assault on the prisoner. The simple facts are these:—on the morning of the 2d of January, the prisoner was peaceably and quietly walking along on the sidewalk near the Tontine Coffee-House, where he observed the prosecutor in conversation with a Mr. M——, as

he passed them the prosecutor cried out to the prisoner, "sir, you are a d——d rascal;" on which the prisoner made a stop and replied by saying Mr. S.— what do you mean by using such abusive and unwarranted epithets against me? On which the prosecutor rushed on the prisoner with all the fury of a tiger, or a savage ferocity and drove him from the walk, vociferating at the same time the most insulting and abusive words that are capable of being uttered in the English language, calling down upon the head of the prisoner the vengeance of heaven, together with all the curses of OBADIAH from the crown of his head to the sole of his foot; at which the prisoner was not a little alarmed, not knowing why or wherefore the prosecutor should heap the *innumerable curses of Obadiah* upon him, therefore he hastened to make his escape. The next morning the prisoner having business in the same neighborhood had occasion to pass the store of Messrs. H.— and G.—when he met the prosecutor in deep conversation with some other person; as he passed, the prosecutor began again to abuse him with all his *Billings-gate language*, as he had done the day previous; of which the prisoner took no notice, but proceeded on about his own affairs. Soon afterwards his business compelled him to pass again the same way, when he observed the prosecutor in conversation with Mr. F.— the auctioneer, at the moment he was passing, the prosecutor cried out with sav-

age yell, you are a d——d rascal, and flew at him with all the ferocity of a tiger. As he approached, the prisoner put up his hands merely in the defensive so as to keep him off from injuring his person, not having the most distant idea of quarrelling, fighting, or even disputing, with him, when the prosecutor, in the twinkling of an eye, opened his jaws and seized the thumb of the prisoner, and bit with such force as nearly to sever it from his hand, as though he intended to have swallowed the thumb ; while in the mean time he made many attempts to gouge out one of the prisoner's eyes. The prisoner never offered or attempted to strike the prosecutor, but merely endeavoured in his own defence, to prevent the prosecutor from maiming him. From the great pain and torture which he endured, and to extricate his thumb from the jaws of the prosecutor he did attempt to put his other hand into the mouth of the prosecutor, but the attempt proved in vain. The prisoner regardless of the consequences, was at last driven to raise his foot, and like Sampson of old bowed with all his might against the body of the prosecutor ; by this effort he extricated his thumb from the jaws of this tiger ; in doing which, one of the prosecutor's teeth was extracted. Now, the prosecutor has complained, and obtained this indictment for the loss of a tooth which he says has always been useful to him, when fighting. We shall prove that the prosecutor had an accomplice, who often cried out beat out the eyes of the rascal, bite off his thumb.

Gentlemen, I see that your indignation is already sufficiently raised against such beastly savage-like conduct as was by the prosecutor demonstrated on the occasion. I contend, as the prosecutor made the first assault by raising his fist in a threatening attitude against the prisoner he was warranted in doing what he did, since it was in self-defence only ; therefore on proving our case I shall expect your verdict of *guiltless*.

☞ The case proved as stated, and instantly the jury gave their *Verdict, Not Guilty*.

General Sessions.



THE PEOPLE,
vs.
D— D—. } *For a Rape.*

J. A. GRAHAM.—*Gentlemen*, having been employed in this prosecution, I rise to state what we intend to prove : that the prisoner and his council may prepare to *rebut*, if they have it in their power, any or all the facts, which, on the part of the people, will be submitted for your consideration. In doing this, I shall confine myself principally to plain facts, since eloquence is necessary only to defend a bad cause, and a good one may easily be supported by the logic of common sense, and the rhetoric of unstudied expression. The prisoner is charged with having committed a rape on the body of D— W— the wife of W— W—. The prisoner is a married man, and by trade a sail-maker, and W— W— by trade a ship-carpenter. These men be-

came acquainted with each other about five years since, and for the two last years they had been in the greatest habits of intimacy and friendship. About the month of August last, Mr. W— undertakes a voyage to Europe. As he was going to be off, the prisoner accompanies him to the water's edge; when he took Mr. W— most cordially by the hand, dropped a tear of sensibility on the occasion, and they bid each other adieu. No sooner had the ship passed Governor's Island, than D— hastens with eager steps to W—'s house, under the pretence of informing Mrs. W— of the husband's having already sailed, when he instantly attempts, by every act, to seduce her of her loyalty to her husband. Gentlemen, I will not attempt to describe the indignation which Mrs. W— felt at such an unexampled instance of impudence as the proposal indicated! She arose from her chair, and, with all the dignity of insulted modesty, commanded this *pretended* friend of her husband; this *well-bred lover*; this *minion of the graces*, to quit instantly her house; forbidding him, at the same time, never more to darken her doors. At this rebuff he departed. A few days only having elapsed, the prisoner again boldly enters the peaceful habitation, where he finds Deodama seated with three small children, one of them at her breast—children, at once the care and happy fruit of the nuptial bed—children, whose engaging manners sweetened the most bitter drops of the cup of affliction! These little cherubs were her only care and consolation, during

the absence of their father, while ploughing the boisterous ocean, and toiling in the roughest seas, to bring from far something which might assist in nursing and educating those whom Deodama considered her brightest ornaments. The prisoner at once is resolved to violate all the laws of honor, humanity, and friendship, to gratify his most diabolical lust. He says to himself, I see, Deodama, you are handsome, you are virtuous, you are happy. I will destroy that *beauty*, virtue, and happiness: I will make you miserable, for it is my will it shall be so. At this the monster snatches the child and tears it from her breast; then, with the ferocity of a tyger, he seizes Deodama, and forces her over in the chair on the floor. She struggles—she cries for help! But no help appears! She cries barbarian! stop thy bloody deed! Her cries and tears have no avail! The monster proceeds, and takes between his *ferocious* jaws her right arm, while “*the flesh did quiver where the pincers pinched;*” and the lips and tongue of the villain were moistened by the blood that flowed while he accomplished the horrid deed! He flies; the injured Deodama, while the wounds and bruises are yet afresh, and the blood streaming from her head and arm, instantly pursues, but he escapes. Gentlemen, the most rigid stoic would have wept in beholding the condition of this poor, *ravished female*: it puts at defiance all description, or even the mind to conceive her distress! Deodama, pale and trembling, applies to Mr. Z—, and, with quivering lips, and faltering ac-

cents, implored his aid and assistance. "Good God! Are we in the United States, in the face of the majesty of her laws? In a country where every person is entitled to freedom and protection? In a land where morality, honor, and religion are revered? Or in a desert, inhabited by wild beasts and savages, where no rights are acknowledged and possessed, but those derived from strength? Gentlemen, I shall in the first place call as a witness the *injured* woman, whom the law declares to be every way a competent witness. The credibility of her testimony, and how far forth she is to be believed, must be left to you, gentlemen, upon the circumstances of fact that concur in her testimony. I shall prove she is a woman of good fame; that she directly applied to Mr. Z—, and discovered the offence and shewed to him her wounds, bruises, and blood. That she told this gentleman at the time, *whom* the monster was that had thus abused her, and that he had fled. These circumstances I shall contend will go to establish fully her evidence.

Rape is defined to be an *unlawful* and *carnal knowledge* of a woman above the age of ten years *against her will*, and of a woman child, under the age of ten years, with or against her will, which is felony by the common and statute law. Coke on Litt. p. 190; and Hale, P. C. p. 628. By our statute, the punishment for the crime of a rape, is confinement in the state-prison, at hard labour, *for life*.

Gentlemen, so far as I have examined this case, I can truly say, that I have never as yet known or heard of a case which compares with the present for blackness of design, and villainous execution, excepting one in England, of *Lord Audley*; that nobleman having aided his servant to commit a rape on his Lordship's own wife, for which he was most justly convicted and executed at Tyburn.— Let me remind you, that this atrocious deed committed by the prisoner on the prosecutrix, has not only deeply wounded the feelings, honor, and happiness of the individual, and driven her and her injured husband almost to despair, but also the majesty of our laws have been most grossly insulted, and call aloud for reparation. Therefore, I charge you, as jurors, to thunder by your verdict this anathema in his ear—“*D—, thou art guilty, and thou shalt surely be punished for the outrage.*”

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Legacy for the Literati.

There are times when the moral world seems to stand still; there are others when it seems impelled towards its goal with an accelerated force. The present is a period more interesting, perhaps, than any which has been known in the whole flight of time. The scenes of providence thicken upon us so fast, and are shifted with so strange a rapidity, as if the great drama of the world were drawing to a close. Events have taken place of late years, and revolutions have been effected, which, had they been foretold a very few years before, would have been viewed as visionary and extravagant; and their influence is yet far from being spent. Europe never presented such a spectacle before; and it is worthy of being contemplated with the profoundest attention by all the inhabitants of the globe. The empire of darkness and despotism has been smitten with a stroke which has sounded through the universe.

When we see whole kingdoms, after reposing for cen-

tries on the lap of their rulers, start from their slumbers, the dignity of man rising up from depression, and tyrants trembling on their thrones, who can remain entirely indifferent, or fail to turn his eye towards a theatre so august and extraordinary? There are kind of throes and struggles of nature, to which it would be a sullenness to refuse our sympathy. Old foundations are breaking up; new edifices are rearing; institutions which have been long held in veneration, as the most sublime refinements of human wisdom and policy, which age hath cemented and confirmed, which power hath supported, which eloquence hath conspired to embellish, and opulence to enrich, are falling fast into decay. New prospects are opening on every side, of such amazing variety and extent, as to stretch farther than the eye of the most enlightened observer can reach. Some beneficial effects appear to have taken place in the old world, sufficient to nourish our most sanguine hope of benefits much more extensive.

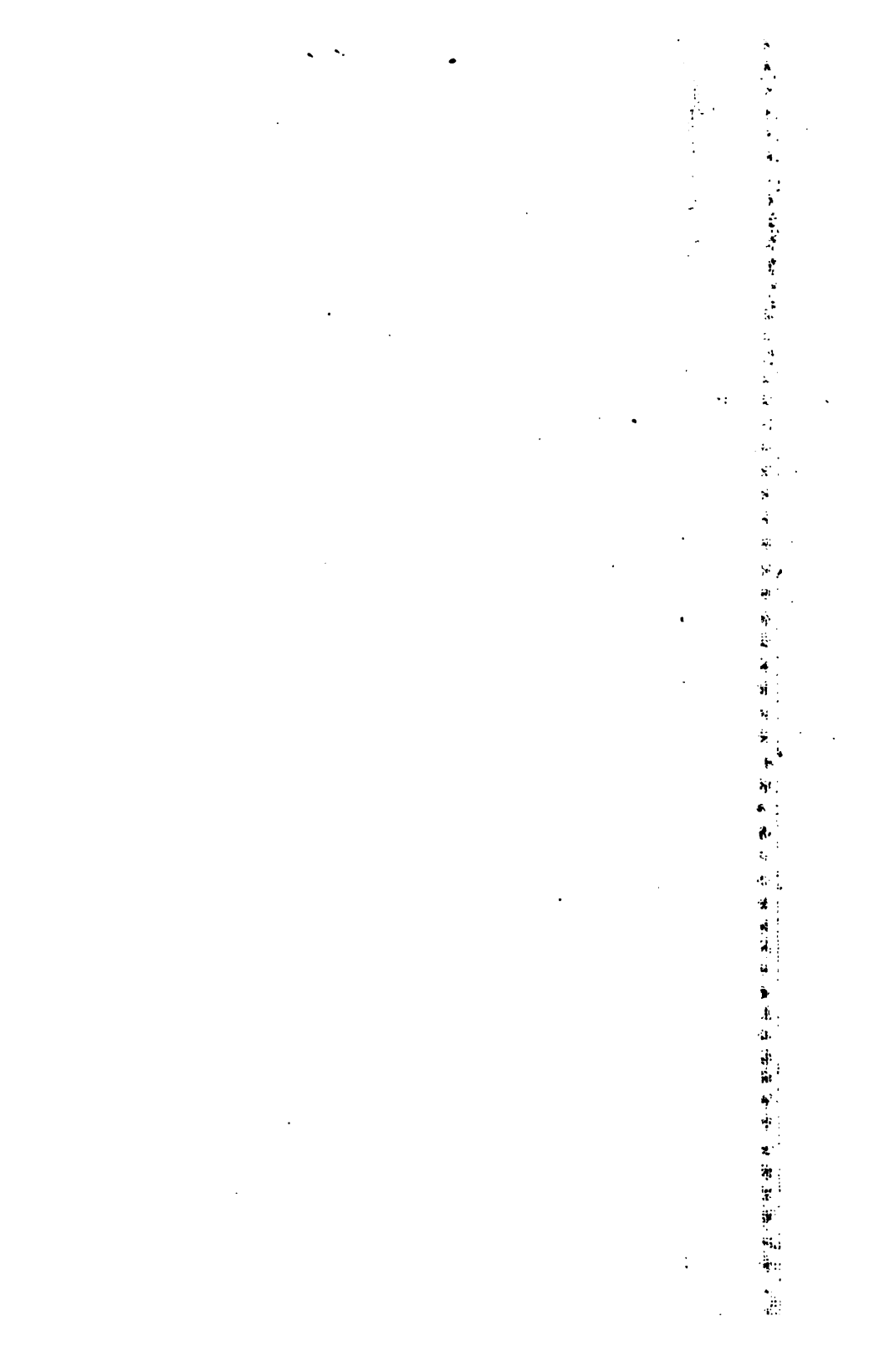
The mischief and folly of wars begin to be understood, and that mild and liberal system of policy by the government of the United States, but which has hitherto remained unknown and unnoticed by the cabinets of Europe. As the mind naturally yields to the impression of objects which it contemplates often, we need not wonder, if amidst events so extraordinary, (are now passing in Europe,) the human character itself should appear to be altering and improving apace. That *fond* attachment to ancient insti-

tutions and blind submission to opinions already revealed, which has ever checked the growth of improvement, and drawn on the greatest benefactors of mankind, danger or neglect, is giving away to a spirit of bold and fearless investigation. Man seems to be becoming more erect and independent. He leans more on himself, less on his fellow-creatures. He begins to feel a consciousness in a higher degree of personal dignity, and is less enamored of artificial distinctions. There is some hope of our beholding that simplicity and energy of character which marks his natural state, blended with the humanity, the elegance, and improvement, of polished society. The events which have already taken place, and the farther changes they forbode, (in Europe) will open to the contemplation of every character, innumerable sources of reflection. To the *philosopher* they present many new and extraordinary facts, where his penetration will find ample scope in attempting to discover their cause, and to predict their effects. He will have an opportunity of viewing mankind in an interesting situation, and tracing the progress of opinion through channels it has rarely flowed in before.

The politician will feel his attention powerfully awakened on seeing new maxims of policy introduced, new institutions, and such total alteration in the ideas of great part of the world, as will oblige him to study the art of government, as it were, *de novo*.

The devout mind will behold in these momentous changes, the finger of the almighty, and discerning in them the dawn of that glorious period, in which wars will cease, and anti-christian tyranny shall fall, will adore that unerring wisdom whose secret operation never fails to conduct all human affairs to their proper issue, and impels the great actors on that troubled theatre, to fulfil, when they least intended it, the counsels of heaven and the predictions of its prophets.

Indignante invidia florebat justus.



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